

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:15-cv-00238-MR
[CRIMINAL CASE NO. 2:05-cr-00225-MR-DLH]**

NATHANIEL BIRCHFIELD,)	
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on the Government's Motion for Extension of Time [Doc. 4].

The Petitioner, through counsel, has filed a motion to vacate pursuant to 28 U.S.C. § 2255, in which he contends that he may be entitled to immediate release. [Doc. 1]. On November 16, 2015, the Court directed the Government to file a response to the Petitioner's motion on or before December 11, 2015. [Doc. 3]. On December 14, 2015, the Government filed the present motion, seeking a 28-day extension of time, which the Petitioner opposes. [Doc. 4].

Upon consideration of the Government's motion, the Court finds that the Government's requested extension of 28 days is not warranted. As noted

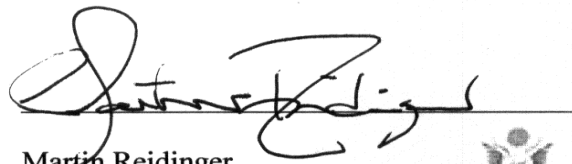
above, the Petitioner contends that in light of the Supreme Court's recent decision in Johnson v. United States, 135 S.Ct. 2551 (June 26, 2015), he is entitled to immediate release. While the Court appreciates the fact that the issue at hand is a matter of first impression in this circuit and one which requires local counsel for the Government to consult with the Department of Justice before responding [see Doc. 4 at 2], the Court is also mindful that Johnson was decided by the Supreme Court nearly six months ago, thus giving DOJ more than adequate time to formulate a position on the issue presented. In like manner, the Court realizes that part of the Petitioner's situation arises from his counsel's waiting from the decision of Johnson in June to file this petition in October.

While the Court will not grant the full extension requested by the Government, the Court permit a brief extension of time for the Government to respond.

IT IS, THEREFORE, ORDERED that the Government's Motion for Extension of Time [Doc. 4] is **GRANTED IN PART**, and the Government shall file an Answer or other responsive pleading to Petitioner's Motion to Vacate, Set Aside, or Correct Sentence on or before **December 21, 2015**.

IT IS SO ORDERED.

Signed: December 16, 2015


Martin Reidinger
United States District Judge

